IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2090 OF 1994

1.Anil Ramchand Chhabria & Anr. .. Petitioners

Vs

1. The Government of India and ors .. Respondents

Shri S.M.Gorwadkar,for the petitioners.
Shri Y.R.Mishra with Shri D.A.Dube for respondent no.1.
Shri J.Mistry with Mr Prem Ranga i/b M/s Crawford Bayley & Co., for respondent no.3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : March 08, 2006.

PC:

1. The petitioners have approached us under Article 226 of the Constitution challenging, at the first instance, the constitutional validity of Section 81 (1A) of the Companies Act, 1956, and secondly for issuing a prohibitory order from exercising powers under the very same section pursuant to the notice dated 31.1.1994 issued by respondent no.4-company for its extra ordinary general meeting of the shareholders scheduled to be held on 5.3.1994, to consider the issue of allotment of shares worth about 100 million US Dollars to be subscribed in foreign currency and in addition to consider the ratio of allotment of 15,00000 preferential equity shares to the promoter group of the same company.

2. While granting Rule, this Court by its order dated 22.6.1994, refused the prayer for interim relief. Consequently, the extra ordinary general meeting of the

shareholders, scheduled on 5.3.1994, proceeded and necessary resolutions might have been passed. Thus, the second part of the relief sought in this petition regarding permanent prohibitory orders, has become infructuous and it cannot be considered. We are, therefore,left with theissue of constitutional validity of section 81 (1A) of the Companies Act 1956 ("Act", for short).

3. Going by the averments set out by the petitioners, the challenge is raised on the ground that the said provision runs counter to the democratic equitable principles and carves out exception nullifying such a principle as envisaged under section 81 itself. It is further alleged that the impugned section runs counter to the principle of issuance of preferential rights and issuance of bonus shares by the company. As per the petitioners, the said provision disclosed discretionary powers given to the majority and,therefore, there is a possibility of shares being cornered by the selective few. On all these grounds, as per the petitioners, the provisions of sub-section (1A) of section 81 of the act are unreasonable and arbitrary and they give unchannalised and unguided powers to the majority voting shareholders.

4. We do not find any force in any of these grounds challenging the constitutional validity of sub-section (1A) of section 81 of the Act. On the other hand, the

language of the said section, as reproduced hereinbelow, is clear and unambiguous.

> "(1A). Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons whether or not those persons include the persons referred to in clause (a) of sub-section (1) in any manner whatsoever -
> (a) if a special resolution to that effect is passed by the company in general meeting, or
> (b) where no such special resolution is passed, if the votes cast whether on a show of hands, or on a poll, as the case may be, in favour of the proposal contained in the resolution moved in tht general meeting including the casting vote, if any, of the chaiman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by memebrs so entitled and voting and the Central Government is satisfied, on an application made by the Board of Directors in this behalf, that the proposal is most beneficial to the company."

Some of the salient features of this provision are that (a) the further allotments of the shares would be made to

any persons, i.e. existing shareholders or any members of public who are not such shareholders, including the promoters at present; (b) the allotment is to be done in the manner that is decided by the general body by way of a special resolution and such a resolution has to be by a majority vote and (c) after the resoltion is passed, an application is required to be made by the Board of Directors forwarding the resolution to the Central Government and the Central Government must be satisfied that the proposal is most beneficial to the company. Having regards to these meausres, we do not see any force in the grounds raised challenging the constitutional validity of the said provision. This is in addition to the fact that the challenge even otherwise is only an academic issue at present.

4. In the premises, this petition fails and the same is hereby dismissed. Rule discharged. No order as to costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**